HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 481/2001

Ishwar Singh S/o Hari Singh …Applicant

Vs.

State of U.P. and Prem Singh …..Respondents

Hon'ble Irshad Hussain, J.

Heard Sri Lokendra Dobhal learned counsel for the applicant and Sri Nandan Arya learned A.G.A. and perused the record. None appear on behalf of the respondent no.2.

From the perusal of the record, it is evident that the present petition under Section 482 of the Code of Criminal Procedure (for short 'Code') has been preferred for quashing of the order dated 11.9.1991 passed by the learned Magistrate in criminal misc. case no. 9/1991 under section 340 of the Code. On the application preferred under section 340 of the Code, the learned Magistrate took cognizance and issued a notice to the applicant and two others. The allegation made in the said application was that Ishwar Singh has filed a criminal complaint with false allegations and false statement under section 200 of the Code was got recorded with malicious intentions knowing it very well that no theft had been committed. The respondent no. 2 wanted that the legal punishment should be awarded to said complainant. It need to be stated that the written complaint got dismissed under section 203 of the Code as is evident from the order dated 22.4.1991 (annexure-5) meaning thereby that the respondent no.2 was not even summoned after taking cognizance in the case. In such a situation, the criminal application under section 340 of the Code was not maintainable and the learned Magistrate made an error of law in taking cognizance of the same and passing the impugned order dated 11.9.1991.

For the reasons aforesaid, the impugned order dated 11.9.1991 is misconceived and the same is liable to be set-aside.

The petition is accordingly allowed. Impugned order dated 11.9.1991 is set aside and the proceedings of the criminal misc. application no.9/1991 under section 340 of the Code are hereby quashed.

(Irshad Hussain, J.)

Dated: 07-06-2004
Rawat